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No. 98-1020

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1998

SHARON RILEY,
Petitioner,

vs.

ST. LOUIS COUNTY, MISSOURI;
RONALD BATTELLE, ST. LOUIS COUNTY POLICE CHIEF;
ROBERT ROBINSON, ST. LOUIS COUNTY POLICE OFFICER;
and STYGAR AND SONS CHAPEL
D/B/A STYGAR FAMILY OF FUNERAL SERVICES,
Respondents.

OPPOSITION OF RESPONDENT STYGAR AND SONS CHAPEL D/B/A STYGAR FAMILY OF FUNERAL SERVICES TO THE PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

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QUESTIONS PRESENTED FOR REVIEW

The following questions, rather than the questions identified by Petitioner, would be presented for review in this case:

1. Whether Petitioner has presented the Court with any question set out in the Petition for Writ of Certiorari as to Respondent Stygar and Sons Chapel d/b/a Stygar Family of Funeral Services pursuant to Supreme Court Rule 14-1(a).

2. Whether the District Court properly dismissed Petitioner's First Amended Complaint pursuant to Federal Rule of Civil Procedure 12(b)(6) because the First Amended Complaint failed to state a cause of action upon which relief could be granted pursuant to 42 U.S.C. § 1983 in that 42 U.S.C.§ 1983 does not provide a cause of action on behalf of the deceased for acts occurring after death.

3. Whether the District Court properly dismissed Petitioner's Amended Complaint pursuant to Federal Rule of Civil Procedure 12(b)(6) because Petitioner has no constitutionally protected right of sepulchre.

4. Whether the District Court properly dismissed Petitioner's Amended Complaint pursuant to Federal Rule of Civil Procedure 12(b)(6) because Petitioner failed to allege sufficient facts or cause of action to support her claim that she was deprived of any property right or right of sepulchre under Missouri common law.

5. Whether the District Court properly dismissed Petitioner's Amended Complaint pursuant to Federal Rule of Civil Procedure 12(b)(6) because tortious conduct of defamation or invasion of privacy does not rise to the level of a constitutional deprivation.

6. Whether the District Court properly dismissed Petitioner's Amended Complaint pursuant to Federal Rule of Civil Proce-

dure 12(b)(6) because Petitioner did not allege or identify a recognized substantive due process right.

7. Whether the District Court properly dismissed Petitioner's Amended Complaint pursuant to Federal Rule of Civil Procedure 12(b)(6) because the allegations of conspiracy were conclusory in nature and were not set forth with sufficient definiteness.

LIST OF PARTIES AND CORPORATE DISCLOSURE STATEMENT

The list of parties contained in the caption of the Petition for Writ of Certiorari is substantially correct. Respondent Stygar and Sons Chapel d/b/a Stygar Family of Funeral Services is a family owned business that has not issued shares to the public. Respondent Stygar has no company, subsidiary, or affiliate that has issued shares to the public. Respondent Stygar has no parent or subsidiary companies.

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1. Petitioner has not presented the Court with any question set out in the Petition for Writ of Certiorari as to Respondent Stygar and Sons Chapel d/b/a Stygar Family of Funeral Services pursuant to Supreme Court Rule 14-1(a).

2. The District Court properly dismissed Petitioner's First Amended Complaint pursuant to Federal Rule of Civil Procedure 12(b)(6) because the First Amended Complaint failed to state a cause of action upon which relief could be granted pursuant to 42 U.S.C. § 1983 in that 42 U.S.C. § 1983 does not provide a cause of action on behalf of the deceased for acts occurring after death.

3. The District Court properly dismissed Petitioner's First Amended Complaint pursuant to Federal Rule of Civil Procedure 12(b)(6) because the First Amended Complaint failed to state a cause of action upon which relief could be granted pursuant to 42 U.S.C. § 1983 in that Petitioner has no constitutionally protected right of sepulchre.

4. The District Court properly dismissed Petitioner's First Amended Complaint pursuant to Federal Rule of Civil Procedure 12(b)(6) because the First Amended Complaint failed to state a cause of action upon which relief could be granted pursuant to 42 U.S.C. § 1983 in that Petitioner failed to allege sufficient facts or cause of action to support her claim that she was deprived of any property right or right of sepulchre under Missouri common law.

5. The District Court properly dismissed Petitioner's First Amended Complaint pursuant to Federal Rule of Civil Procedure 12(b)(6) because the First Amended Complaint failed to state a cause of action upon which relief could be granted pursuant to 42 U.S.C. § 1983 in that tortious conduct of defamation or invasion of privacy does not give rise to the level of a constitutional deprivation.

6. The District Court properly dismissed Petitioner's First Amended Complaint pursuant to Federal Rule of Civil Procedure 12(b)(6) because the First Amended Complaint failed to state a cause of action upon which relief could be granted pursuant to 42 U.S.C. § 1983 because Petitioner did not allege or identify a recognized substantive due process right.

7. The District Court properly dismissed Petitioner's First Amended Complaint pursuant to Federal Rule of Civil Procedure 12(b)(6) because the First Amended Complaint failed to state a cause of action upon which relief could be granted pursuant to 42 U.S.C. § 1983 in that the allegations of conspiracy were conclusory in nature and were not set forth with sufficient definiteness.

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PERCEIVED MISSTATEMENTS IN PETITIONER'S STATEMENT OF THE CASE

The District Court dismissed Petitioner's Section 1983 claims in the First Amended Complaint for failure to state a claim upon which relief could be granted. (Petition for Writ of Certiorari, Appendix, 9a-19a). All Respondents had filed Motions to Dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6). (Joint Appendix A-1 to A-13; A-62 to A-71; A-86 to A-87; A-92 to A-101). For unstated reasons, Petitioner has not deemed it appropriate to provide the Court with the pleading, i.e. the Amended Complaint, which forms the basis of the present Petition for Writ of Certiorari. (Joint Appendix A-53 to A-61).

Petitioner's statement of the case should consist of the allegations contained in the Amended Complaint as the "facts material to consideration of the questions presented..." Supreme Court Rule 14-1(g). While Respondent does not wish to unnecessarily burden the Court with objections to the statement of the case, Respondent also does not want to give the Court the impression Respondent agrees that Petitioner's statement of the case is *in haec verba* with the Amended Complaint. Indeed, Respondent has the obligation to address any perceived misstatement of fact in the Petition. Supreme Court Rule 15-2.

Respondent Stygar sets forth the following perceived misstatements in Petitioner's statement of the case:

- Paragraph 1 of the statement of the case does not have direct corollary in the Amended Complaint. (Petition for Writ of Certiorari at 7).

- Paragraph 2 states that Petitioner arranged for burial services with Respondent Stygar which is reasonably compatible with the Amended Complaint. The other statements in paragraph 2 are not contained in the Amended Complaint. (Petition for Writ of Certiorari at 7).

- Paragraph 3 asserts an intelligence officer with County Police was sent to the funeral home to observe and photograph the funeral services without Petitioner's knowledge or permission. While the Amended Complaint does aver that a police officer conducted photographic and other surveillance of the deceased without the permission of Petitioner, the other alleged facts are, at best, difficult to read in the Amended Complaint. (Petition for Writ of Certiorari at 7).

- As to paragraph 4, there are no allegations in the Amended Complaint that employees of Respondent Stygar "stood by" when the photographs were taken. There are no allegations in the Amended Complaint to the effect that no employees told Petitioner the photographs were being taken even though she was waiting outside for her son's casket to be loaded into a hearse for the drive to the funeral mass. (Petition for Writ of Certiorari at 7).

- As to paragraph 5, while the Amended Complaint avers the photographs were shown as "public gatherings", there are no allegations in the Amended Complaint that there was a slide presentation at a so-called "gang awareness" seminar conducted by the department at a school in the deceased's neighborhood. (Petition for Writ of Certiorari at 7-8).

- Paragraph 6 indicates that Petitioner learned of the photographic surveillance of her son's funeral after a relative saw the slide presentation at the school. Respondent is unable to locate any averment in the Amended Complaint to support the statement. (Petition for Writ of Certiorari at 8).

Petitioner concludes that the District Court dismissed Petitioner's Complaint for failure to state a claim. (Petition for Writ of Certiorari at 8). The District Court dismissed the Section 1983 claims (Count I) with prejudice for failure to state a claim upon which relief can be granted. (Petition for Writ of Certiorari

at 19a). The District Court dismissed without prejudice the state common law counts (Counts II and III) pursuant to 28 U.S.C. § 1367(c)(3). (*Id.*)

Respondent also perceives other apparent misstatements. Petitioner advises the Court: "A police officer forcing a coffin lid open and photographing the corpse of a teenager suicide victim...violated a fundamental right embodied in the United States Constitution..." (Petition for Writ of Certiorari at iii). There is no allegation in the Amended Complaint that a police officer forced open a coffin lid.

Similarly, the Petition relates: "The police officer's actions in delaying the teenager's burial so he could photograph the victim and later use the photographs for 'so-called gang awareness' public meetings...is so reprehensible it shocks the conscience..." (Petition for Writ of Certiorari at iii). There is no statement in the Amended Complaint that the police officer's actions delayed the teenager's burial and, as pointed out above, the phrase "gang awareness" is not contained in the Amended Complaint.

REASONS FOR DENYING THE WRIT

THE PETITION FOR WRIT OF CERTIORARI SHOULD BE DENIED BECAUSE:

1. PETITIONER HAS NOT PRESENTED THE COURT WITH ANY QUESTION SET OUT IN THE PETITION FOR WRIT OF CERTIORARI AS TO RESPONDENT STYGAR AND SONS CHAPEL d/b/a STYGAR FAMILY OF FUNERAL SERVICES PURSUANT TO SUPREME COURT RULE 14-1(a).

2. THE DISTRICT COURT PROPERLY DISMISSED PETITIONER'S FIRST AMENDED COMPLAINT PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 12(b)(6) BECAUSE THE FIRST AMENDED COMPLAINT FAILED TO STATE A CAUSE OF ACTION UPON WHICH RELIEF COULD BE GRANTED PURSUANT TO 42 U.S.C. § 1983 IN THAT 42 U.S.C. § 1983 DOES NOT PROVIDE A CAUSE OF ACTION ON BEHALF OF THE DECEASED FOR ACTS OCCURRING AFTER DEATH.

3. THE DISTRICT COURT PROPERLY DISMISSED PETITIONER'S FIRST AMENDED COMPLAINT PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 12(b)(6) BECAUSE THE FIRST AMENDED COMPLAINT FAILED TO STATE A CAUSE OF ACTION UPON WHICH RELIEF COULD BE GRANTED PURSUANT TO 42 U.S.C. § 1983 IN THAT PETITIONER HAS NO CONSTITUTIONALLY PROTECTED RIGHT OF SEPULCHRE.

4. THE DISTRICT COURT PROPERLY DISMISSED PETITIONER'S FIRST AMENDED COMPLAINT PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 12(b)(6) BECAUSE THE FIRST AMENDED COMPLAINT FAILED TO STATE A CAUSE OF ACTION UPON WHICH RELIEF COULD BE GRANTED PURSUANT TO 42 U.S.C.

§ 1983 IN THAT PETITIONER FAILED TO ALLEGE SUFFICIENT FACTS OR CAUSE OF ACTION TO SUPPORT HER CLAIM THAT SHE WAS DEPRIVED OF ANY PROPERTY RIGHT OR RIGHT OF SEPULCHRE UNDER MISSOURI COMMON LAW.

5. THE DISTRICT COURT PROPERLY DISMISSED PETITIONER'S FIRST AMENDED COMPLAINT PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 12(b)(6) BECAUSE THE FIRST AMENDED COMPLAINT FAILED TO STATE A CAUSE OF ACTION UPON WHICH RELIEF COULD BE GRANTED PURSUANT TO 42 U.S.C. § 1983 IN THAT TORTIOUS CONDUCT OF DEFAMATION OR INVASION OF PRIVACY DOES NOT GIVE RISE TO THE LEVEL OF A CONSTITUTIONAL DEPRIVATION.

6. THE DISTRICT COURT PROPERLY DISMISSED PETITIONER'S FIRST AMENDED COMPLAINT PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 12(b)(6) BECAUSE THE FIRST AMENDED COMPLAINT FAILED TO STATE A CAUSE OF ACTION UPON WHICH RELIEF COULD BE GRANTED PURSUANT TO 42 U.S.C. § 1983 BECAUSE PETITIONER DID NOT ALLEGE OR IDENTIFY A RECOGNIZED SUBSTANTIVE DUE PROCESS RIGHT.

7. THE DISTRICT COURT PROPERLY DISMISSED PETITIONER'S FIRST AMENDED COMPLAINT PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 12(b)(6) BECAUSE THE FIRST AMENDED COMPLAINT FAILED TO STATE A CAUSE OF ACTION UPON WHICH RELIEF COULD BE GRANTED PURSUANT TO 42 U.S.C. § 1983 IN THAT THE ALLEGATIONS OF CONSPIRACY WERE CONCLUSORY IN NATURE AND WERE NOT SET FORTH WITH SUFFICIENT DEFINITENESS.

Petitioner has failed to set out any question in the Petition, or fairly included therein, as to Respondent Stygar which should be considered by the Court. Supreme Court Rule 14-1(a). Petitioner has set forth five reasons for granting the Writ. (Petition for Writ of Certiorari at 3i-iv). All reasons are based on the actions or omissions of the St. Louis County Respondents. (*Id.*) While Petitioner generally requests the decision of the Eighth Circuit to be reversed, Petitioner makes no specific demand as to Respondent Stygar. (Petition for Writ of Certiorari at 17).

In the event the Court determines that questions as to Respondent Stygar are before the Court, Respondent Stygar states the decisions of the District Court and the Eighth Circuit Court of Appeals correctly applied the law to the facts. Respondent Stygar would incorporate by reference those decisions. *Riley v. St. Louis County, Missouri, et. al.*, No. 4:96CV01105FRB (U.S.D.Ct. E.D.Mo. May 31, 1996), *aff'd* 153 F.3d 627 (8th Cir. 1998). (Petition for Writ of Certiorari, Appendix 1a-21a). There is no reason to restate their reasoning.

CONCLUSION

The Petition for Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

Three copies of the Opposition of Respondent Stygar and Sons Chapel d/b/a Stygar Family of Funeral Services were mailed this _____ day of January, 1999, to Henry T. Vogt, Attorney for Petitioner, 130 S. Bemiston, Suite 705, St. Louis, Missouri 63105; and Christopher J. McCarthy, Attorney for Respondents St. Louis County, Missouri, Ronald Battelle, and Robert Robinson, County Government Center, 41 S. Central Ave., Clayton, Missouri 63105.